No. 13939

United States Court of Appeals

FOR THE NINTH CIRCUIT.

WILLIAM JOY BATELAAN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

REPLY BRIEF FOR APPELLANT

Appeal from the United States District Court for the Southern District of California, Central Division.

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Cases Cited

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MAY IT PLEASE THE COURT:

What has been said in the Reply Brief for Appellant in *Joseph David Triff* v. *United States of America,* No. 13952, filed in this Court, will be referred to here rather than repeat what was there said. However, appellant desires to file this his reply brief to brief of appellee.

I.

The appellee emphasizes, at page 7 of its brief, that there

is no constitutional right to exemption from military service. With this appellant agrees. But when Congress has established a statutory exemption or deferment such must be secured in accordance with the act and regulations.

A statutory exemption or deferment must be maintained according to the principles of due process of law. Appellant contends that his rights under the statute have been violated, contrary to the act, the regulations and the requirements of procedural due process.

II.

The argument is made by appellee, at page 7 of its brief, that only those who qualify under the procedure set up by Congress can claim the exemption or deferment. With this the appellant agrees. But the procedure fixed by Congress requires that the draft boards not deny, contrary to fact and law, what the statute guarantees.

III.

Appellee relies, at pages 8-9 of its brief, upon the fact that the board rejected appellant's claim. It is said that such rejection is final because the Selective Service file indicates sufficient basis in fact. The appellee nowhere refers to any material basis in fact for the denial of the conscientious objector status. Accordingly its argument should be rejected.

IV.

At page 9 of its brief appellee says that appellant's being employed in an occupation devoted to the production of war material *per se* entitled the board to deny the exemption.

This ground now urged by the Department of Justice was not urged by the Department of Justice in its recommendation to the appeal board. The Attorney General in his recommendation to the appeal board suggested that Batelaan should be denied his claim for exemption because he was willing to defend himself. This recommendation of

the Attorney General is inconsistent with that made in the case of *Donald Wesley Pitts* v. *United States of America,* No. 14164, filed in this Court. See Government's Exhibit 1 filed in the *Pitts* case. See also Point III in the Reply Brief for Appellant filed in the companion case of *Joseph David Triff* v. *United States of America,* No. 13952, where the recommendation in the *Pitts* case is quoted.

Appellant submits that the present position of the Attorney General in this case, whereby he relies on the employment of appellant in an aircraft factory as a basis for the denial of the conscientious objector status, is a misinterpretation of Section 6(j) of the act. See the opinion of Mr. Justice Douglas on December 10, 1953, in *Roger Dean Clark* v. *United States of America,* 98 L. Ed. 171, which is printed as an appendix to this reply brief. It is to be observed that Congress never provided that the conscientious objections must be to "war in any form." Congress did not hold that a conscientious objector who was not opposed to self-defense and employment in defense work was not a conscientious objector. It is participation in war in any form that is the subject matter of the statutory provision for the conscientious objector. Nothing whatever is said in the act or the regulations or in the legislative history that indicates anything to the effect that if a person is willing to do a certain type of work he cannot be considered a conscientious objector having conscientious scruples to participation in war in any form even though he was willing to perform secular defense work as a means of employment. If the unreasonable interpretation placed upon the act by the trial court and the local board is accepted it will authorize an unending and uncontrollable scope of inquiry. Every type of work and act that may be conceivably thought of can be relied upon to determine and deny the conscientious objector status.

Congress did not intend to allow an inquest to be held as to the kind of work that a registrant did or was willing to do. Congress intended to protect every person who had conscientious objections based upon religious grounds to par-

ticipation in war in any form. Congress did not make the factors relied upon by the trial court and the boards in this case as any basis in fact for the denial of the conscientious objector claim.

Neither the act nor the regulations make the type of work that a person does a criterion to follow in the determination of his conscientious objections. The sole questions for determination of conscientious objection are: (1) Does the person object to participation in the armed forces as a soldier? (2) Does he believe in the Supreme Being? (3) Does this belief carry with it obligations to God higher than those owed to the state? (4) Does his belief originate from a belief in the Supreme Being and not from a political, sociological, philosophical or personal moral code?

Batelaan's case commands affirmative answers to all these questions. He fits the statutory definition of a conscientious objector.

It is entirely irrelevant and immaterial to hold that there was basis in fact because he was willing to work in an aircraft factory. This was not an element to consider and in any event it was no basis in fact according to the law for the denial of his claim. It did not impeach or dispute in any way what he said in his questionnaire and conscientious objector form. The law does not authorize the draft boards to invent fictitious and foreign standards and use them to speculate against evidence and facts that are undisputed. —*Annett* v. *United States,* 205 F. 2d 689 (10th Cir. June 26, 1953); *United States* v. *Alvies,* 112 F. Supp. 618 (N. D. Cal. S. D.); *United States* v. *Graham,* 109 F. Supp. 377 (W. D. Ky.); *United States* v. *Everngam,* 102 F. Supp. 128 (D. W. Va.).

The question of employment and work performed by one who claims to be a conscientious objector becomes material only when the type of work done or agreed to be done by the conscientious objector is of a combatant nature. The Congress of the United States in passing the Universal Military Training and Service Act provides for two kinds of

conscientious objectors. One is a person who has objections only to the performance of combatant service. He is recognized as willing to wear a uniform and do anything in the armed forces except kill or carry a gun. This type of conscientious objector does not have his conscience questioned because of the type of work he is willing to perform even though it may be in the armed forces. No board or official of the government may deny a registrant his conscientious objector claim to the I-A-O classification (limited military service as a conscientious objector opposed to combatant military service only) because of his willingness to perform noncombatant service in the armed forces, thus helping the armed services do a job of killing.

It is submitted also that the conscientious objector to both combatant and noncombatant military service ought not to be denied his conscientious objector classification because of the kind of work he is doing outside the armed services. The law disqualifies no one on such ground. It seems that a reasonable interpretation of the act and the regulations would not make the type of employment that a registrant is willing to do relevant so long as it does not involve combatant or noncombatant military service.

CONCLUSION

It is submitted that the judgment of the court below should be reversed and the appellant ordered acquitted.

Respectfully,

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Counsel for Appellant

APPENDIX

SUPREME COURT OF THE UNITED STATES

No. ———, October Term, 1953

Roger Dean Clark
v.
United States of America
} Application for Bail Pending Appeal

[98 L. Ed. 171, December 10, 1953]

Opinion of Mr. Justice Douglas.

Appellant is a member of Jehovah's Witnesses who claimed the right given by § 6(j) of the Universal Military Training and Service Act, 50 U. S. C. App. § 456(j), to be classified as a conscientious objector. According to the papers before me he indicated that he was by religious training and belief opposed to participation in war but that he was willing to use force in defense of his family or his congregation and that he would work in a defense plant if in great economic need. Nevertheless he was classified I-A and was convicted of refusing to be inducted into the armed forces under § 12(a) of the Act. He has appealed his conviction to the Court of Appeals for the Ninth Circuit and wishes to be set free on bail while his appeal is pending. The District Court and the Court of Appeals have denied bail. I am asked to exercise the power granted me as Circuit Justice by Rule 46(a)(2) of the Federal Rules of Criminal Procedure and grant bail.

Under that Rule bail may be allowed "only if it appears

that the case involves a substantial question which should be determined by the appellate court." The question on the appeal is whether there was a basis in fact for appellant's I-A classification. *Estep* v. *United States,* 327 U. S. 114.

The Court of Appeals denied bail on November 13, 1953. At that time *Dickinson* v. *United States,* 203 F. 2d 336 (C. A. 9th Cir.), still stood. Since that time we reversed that decision. See *Dickinson* v. *United States,* 346 U. S. 389, decided November 30, 1953. Moreover the claim of appellant that he should have been classified as a conscientious objector and the decision of the District Court against him shape up an issue that may turn on whether *Annett* v. *United States,* 205 F. 2d 689, represents the law. In that case the Court of Appeals for the Tenth Circuit held, on facts closely analagous to these, that there was no basis in fact for denial of a conscientious objector classification. The *Annett* decision has recently been followed by the Courts of Appeal for the Second and Eighth Circuits. *United States* v. *Pekarski,* 207 F. 2d 930 (C. A. 2d Cir.), decided October 23, 1953; *Taffs* v. *United States,* 208 F. 2d 329 (C. A. 8th Cir.), decided December 7, 1953. These considerations lead me to conclude that in spite of the great deference I owe the previous determination of this application by the Court of Appeals, the merits of appellant's case cannot now be termed insubstantial. Bail will accordingly be granted in the amount of $2500 as approved by the District Court.

A true copy

Test: HAROLD B. WILLEY,
Clerk of the Supreme Court of
the United States

[SEAL]

By /s/ HUGH W. BARR
Deputy